

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Wallie Gene Lang,

Civil No. 15-1508 (DWF/BRT)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Department of Corrections; Tom Roy,
Commissioner; and Becky Dooley,
Warden,

Respondents.

This matter is before the Court upon *pro se* Petitioner Wallie Gene Lang's ("Petitioner") self-styled objections (Doc. No. 20) to Magistrate Judge Becky R. Thorson's November 13, 2015 Report and Recommendation (Doc. No. 19) insofar as it recommends that: (1) Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 be dismissed with prejudice; and (2) no certificate of appealability be granted in this matter. Respondent filed a response to Petitioner's objections on December 11, 2015. (Doc. No. 21.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

In the Report and Recommendation, the Magistrate Judge recommended that Petitioner's petition for a writ of habeas corpus be dismissed with prejudice. First, Petitioner objects to the finding that Petitioner has procedurally defaulted on his constitutional claims by failing to properly raise them in state court. Petitioner also points to transcripts in this case, which he argues demonstrate that his rights were violated and that his guilty plea was not voluntary.

In the Report and Recommendation, Magistrate Judge Thorson found that Petitioner procedurally defaulted on his constitutional claims by failing to properly raise them in state court. (Doc. No. 19 at 2.) The Magistrate Judge also noted that Petitioner originally asserted claims under the Fourth Amendment for ineffective assistance of both trial and appellate counsel, but that Petitioner withdrew his Fourth Amendment claim. (*Id.*) The Magistrate Judge further noted that Petitioner "agreed to delete his ineffective assistance claims, which remain unexhausted in state court, in lieu of having the entire habeas petition dismissed without prejudice as a mixed petition containing both exhausted and unexhausted claims." (*Id.* at n.2.) Having chosen to dismiss his ineffective assistance claims, Petitioner's current arguments with respect to ineffective assistance of counsel are of no avail.

Second, Petitioner claims that the Magistrate Judge's findings were not accurate, in that the Report and Recommendation referenced DWI convictions during the period from 1990 to 2005. However, in the Report and Recommendation, it is apparent that the Magistrate Judge relied on Petitioner's admission and the record proving that he had

pleaded guilty to two felony DWI's in 2005 and 2008, respectively. (*Id.* at 7.) The Magistrate Judge only recited the additional prior convictions as part of a discussion of a presentence investigation report in the Factual Background detailing Petitioner's criminal history. (*Id.* at 5.)

Having carefully reviewed the record, the Court concludes that Petitioner's objections do not warrant a departure from Magistrate Judge Thorson's recommendations. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. *Pro se* Petitioner Wallie Gene Lang's self-styled objections (Doc. No. [20]) to Magistrate Judge Becky R. Thorson's November 13, 2015 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Becky R. Thorson's November 13, 2015 Report and Recommendation (Doc. No. [19]) is **ADOPTED**.

3. Respondents' Motion to Dismiss § 2254 Petition (Doc. No. [7]) is **GRANTED**.

4. Petitioner Wallie Gene Lang's petition for a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. No. [1]) is **DISMISSED WITH PREJUDICE**.

5. No certificate of appealability is granted in this matter.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 5, 2016

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge